

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

DOUGLAS FIELD,)	
)	
Plaintiff)	
v.)	Civ. No. 97-168-B
)	
CITY OF GARDINER,)	
)	
Defendant)	

MEMORANDUM AND ORDER OF DECISION

BRODY, District Judge

Plaintiff, Douglas Field, brings this disability discrimination action against his employer, Defendant, City of Gardiner, Maine, alleging violations of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101-12213, and the Maine Human Rights Act (“MHRA”), 5 M.R.S.A. §§ 4551-4632. Defendant has moved for summary judgment on Plaintiff’s MHRA claim, contending that the discrimination alleged in Plaintiff’s Amended Complaint is not governed by the MHRA. For the reasons discussed below, Defendant’s motion is DENIED.

SUMMARY JUDGMENT

Summary judgment is appropriate in the absence of a genuine issue as to any material fact and when the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue is genuine for these purposes if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A material fact is one that has “the potential to affect the outcome of the suit under applicable law.” Nereida-Gonzalez v. Tirado-Delgado, 990 F.2d 701, 703 (1st Cir. 1993). For the purposes of summary judgment the Court views the record in the light most favorable to the nonmoving party. See McCarthy v. Northwest Airlines, Inc., 56 F.3d 313, 315 (1st Cir. 1995).

BACKGROUND

The basic facts of this case, as alleged by Plaintiff, are as follows. Plaintiff worked for the City of Gardiner Waste Water Treatment Plant from 1990 until 1995. In March of 1995, Plaintiff was injured and took a leave of absence from work at the recommendation of his doctor. Plaintiff states that when he was fully recovered and ready to return to work in the fall of 1995, he was informed that he had been laid off and replaced by someone less qualified. Plaintiff alleges that Defendant discharged and intentionally discriminated against him with respect to his employment because of his disability. Plaintiff has been issued a Notice of Right to Sue under the ADA by the U.S. Equal Employment Opportunity Commission and has been authorized by the Maine Human Rights Commission to pursue his MHRA claim in court. Plaintiff is also pursuing a retaliatory discharge claim before the Maine Workers' Compensation Commission.

DISCUSSION

Defendant has moved for summary judgment on Plaintiff's MHRA claim. Defendant argues that Plaintiff's allegations of discrimination are exempt from the Maine Human Rights Act and are instead exclusively governed by Maine's Workers' Compensation Act, 39-A M.R.S.A. § 1 et seq. Defendant contends that the MHRA specifically exempts from its coverage any and all discrimination related to the filing of a Workers' Compensation claim, that Plaintiff's claim is so related, and that Plaintiff is therefore limited to the procedures and remedies available under Workers' Compensation law.

The MHRA prohibits employers from discriminating against or discharging employees because of race, color, sex, physical or mental disability, religion, age, ancestry, or national origin. 5 M.R.S.A. § 4572(1)(A). The MHRA does not, however, apply to "discrimination

governed by” section 353 of the Workers’ Compensation Act. 5 M.R.S.A. § 4572(1)(A)(1).

Section 353 provides:

An employee may not be discriminated against by an employer in any way for testifying or asserting any claim under this Act [Workers’ Compensation Act]. Any employee who is so discriminated against may file a petition alleging a violation of this section If the employee prevails at this hearing, the hearing officer may award the employee reinstatement to the employee’s previous job, payment of back wages, reestablishment of employee benefits and reasonable attorney’s fees.

39-A M.R.S.A. § 353.

Therefore, it is clear that an employee cannot bring a claim alleging that his employer discriminated against him for asserting a Workers’ Compensation claim under the MHRA and that this form of discrimination is governed solely by Workers’ Compensation law.

Plaintiff’s MHRA claim, however, is not based on the allegation that Defendant discriminated against him because he asserted a Workers’ Compensation claim. Rather, Plaintiff alleges in his Amended Complaint that Defendant discharged him and intentionally discriminated against him with respect to his compensation, terms, conditions and/or privileges of employment because of his disability. Plaintiff’s Amended Complaint does not allege that he suffered discrimination as a result of asserting a Workers’ Compensation claim.

Defendant broadly asserts that “discrimination by an employer against whom an employee has filed a Workers’ Compensation claim is governed exclusively by Title 39-A M.R.S.A. § 353.”¹ It contends that because Plaintiff has filed a petition with the Maine Workers’ Compensation Board alleging that he was discriminated against for asserting Workers’

¹ Defendant places this sentence in quotes and cites 5 M.R.S.A. § 4572(1)(A)(1). The Court assumes this was a typographical error because § 4572(1)(A)(1) says no such thing.

Compensation rights he is therefore barred from raising a discrimination claim under the MHRA. The Court disagrees. As noted above, section 353 governs claims of discrimination arising out of “testifying or asserting any claim” under the Workers’ Compensation Act. It does not govern, however, when the alleged discrimination is based on other forms of discrimination.

The Maine Supreme Judicial Court has interpreted the language “asserting any claim under this Act” of section 353, as referring “to any right conferred by the Worker’s Compensation Act on the employee, and not merely the voicing of a demand for benefits by petition or otherwise.” Lindsay v. Great Northern Paper Co., 532 A.2d 151, 153 (Me. 1987). An assertion of a right not to work while physically incapacitated as a result of a work-related injury constitutes a “claim” under the Workers’ Compensation Act. Id. Under this broad reading of section 353, were the Court to hold, as Defendant suggests, that the assertion of a 353 claim bars subsequent assertion of a claim under the Maine Human Rights Act, an employee’s simple expression of Workers’ Compensation rights to an employer would foreclose any judicial remedy under the MHRA. This result is inconsistent with the intent of both the MHRA and the Workers’ Compensation Act.

Defendant cites McDonald v. Eastern Fine Paper, 485 A.2d 228 (Me. 1984) to support his proposition that the assertion of a section 353 claim before the Workers’ Compensation Board precludes an employee from bringing any discrimination claim under the MHRA. To the contrary, McDonald holds only that a section 353 Workers’ Compensation Act claim has its own exclusive enforcement procedure and that such claims must be brought before the Workers’ Compensation Commission, not before the court. Id. at 229-30.

The MHRA requires employees whose claims are based on discrimination related to the

assertion of Workers' Compensation rights to bring such claims under the rubric of the Workers' Compensation law, rather than the MHRA. Neither the MHRA nor McDonald prevent Plaintiff from asserting other disability discrimination claims that are subject to the MHRA simply because he elected to pursue his rights under the Workers' Compensation Act.

CONCLUSION

Defendant's Motion for Summary Judgment as to Count II of the Amended Complaint is DENIED for the reasons stated above.

SO ORDERED.

MORTON A. BRODY
United States District Judge

Dated this 14th day of January, 1998.